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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1076 89

JACKSONVILLE PAPER COMPANY, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS AND BRIEF IN SUPPORT THEREOF.

LOUIS KURZ,
THOS. B. ADAMS,
Counsel for Petitioner.

INDEX.

Subject Index.

	Page
Statement of matters involved	1
I. Findings of fact not reversible by Court of Customs and Patent Appeals	2
II. Entered values made under duress and petitioner entitled to avoid the same	3
III. Courts below had adequate power to give relief	12
Basis of jurisdiction	14
Questions presented	15
Reasons for allowance of writ	15
1. Reason 1	15
2. Reason 2	16
3. Reason 3	16
Brief for petitioner	21
Opinion below	21
Jurisdiction	21
Matters involved	22
Assignments of error	22
Argument:	
Point I—Findings of fact by Customs Court binding on Court of Customs and Patent Appeals	22
Point II—Entered values made under duress and voidable by petitioner through means of protest filed under Section 514 of the Tariff Act	26
Point III—Customs Court had ample authority to grant relief	30

Table of Cases Cited.

Berstein v. *United States*, 18 C. C. C. P. A. 460	27
Cottman Co. v. *Dailey*, 20 Fed. Supp. 142, aff'd 94 F. (2d) 85	14, 17
David L. Moss Co. v. *United States* 103 F. (2d) 395	17
Erhardt v. *Winter*, 92 Fed. 918	29

Page

Hecht v. *Malley*, 276 Fed. 830 28
Ingram v. *Lewis*, 37 F. (2d) 259, 70 A. L. R. 702, cert. den. 282 U. S. 842 29
May Co. v. *United States*, 17 Ct. Cust. & Pat. App. 190 23
Maxwell v. *Griswold*, 10 How. 242 ..... 5, 26, 29
McCaughn v. *Real Estate Land & T. T. Co.*, 297 U. S. 606, 80 L. Ed. 879 ..... 15, 16, 22
Panther Rubber Mfg. Co. v. *Com. Internal Rev.*, 45 F. (2d) 314 29
Patchogue-Plymouth Mills Corp. v. *Durning*, 101 F. (2d) 41 17
Pictorial Printing Co. v. *Com. Internal Rev.*, 38 F. (2d) 563 29
Riccomini v. *United States*, 69 F. (2d) 480 ..... 16, 30
Robertson v. *Frank Brothers Co.*, 132 U. S. 17 26
Sinclair Navigation Co. v. *United States*, 32 F. (2d) 90, 61 C. J. 992-3 26
United States v. *Allenby & Co.*, 20 Ct. Cust. & Pat. App. 80 23
United States v. *M. Rice & Co.*, 257 U. S. 536, 66 L. Ed. 357 15
United States v. *Wheeler, Elder & Elder*, 17 Ct. Cust. & Pat. App. 279 23

STATUTES CITED.

Judicial Code, Section 195, as amended June 17, 1930, 28 U. S. C. A. 308 ..... 14, 15, 21
Tariff Act of 1922, Sections 514 and 515 17
19 U. S. C. A. 1501 4
19 U. S. C. A. 1503(a), Tariff Act, Sec. 503(a) 5, 22
19 U. S. C. A., Sec. 1503(b), Tariff Act, Sec. 503(b) 3, 5, 22

OTHER AUTHORITIES CITED.

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61 C. J. 993 29
Matter of Kridel, Treas. Dec. 37209 29
Pomeroy's Equity Jurisprudence, 4th Ed., Sec. 805 ..

SUPREME COURT OF THE UNITED STATES

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No. 1076

JACKSONVILLE PAPER COMPANY, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS IN CUSTOMS CASES Nos. 4395, 4396, 4397, 4398, 4399, 4400 AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Supreme Court of the United States:

Jacksonville Paper Company, a corporation, with its principal place of business at Jacksonville, Florida, respectfully petitioning shows to the Court:

Statement of Matters Involved.

These proceedings involve six separate petitions for review of six separate protests for reliquidation and repayment of excess duties on six importations of kraft paper from Sweden in the year 1936. The cases were consolidated

for trial in the United States Customs Court and were likewise consolidated for the purpose of appear to the United States Court of Customs and Patent Appeals.

Primarily, three questions are involved:

I. Were the findings of fact made by the United States Customs Court to the effect that the "entered values" were made by the importer under duress imposed by the Collector of Customs, conclusive upon the United States Court of Customs and Patent Appeals, it appearing from the record that the findings of the United States Customs Court were supported by substantial evidence?

The United States Customs Court found as a matter of fact as shown by the decision (R. 73 and 75, bottom R. 83 and top R. 84) that the importer insisted on making the entries on the basis of invoice values but that the Collector of Customs refused to accept entries on that basis even though redelivery bonds would be filed in usual course and informed the importer that possession of the goods could only be obtained if entries were made on the basis of what was supposed to be foreign market values. This, said the Court (R. 84) amounted to "moral duress." That the importer was faced with the prospect of a shutdown (R. 47) if it did not get this merchandise as the shipments arrived. Therefore the entries as made were the result of duress thus imposed by the customs officials. The United States Customs Court however concluded (bottom R. 87) that no relief could be given to the importer because under its construction of the Tariff Act the court did not have power to relieve against the "entered value" and order a reliquidation of the duties on the basis of what had been found to be the legal basis of entry, to-wit, invoice values. The United States Court of Customs and Patent Appeals by decision handed down March 1st, 1943, as appears by the record in

this cause, disagreed with the United States Customs Court on the facts and reached the conclusion that there was no duress imposed by the customs officials (see next to last paragraph of the opinion). The United States Court of Customs and Patent Appeals also agreed with the Customs Court on the point that the Customs Court was without power to give any relief against the "entered value." The petitioner desires to have this Court consider and determine first whether the United States Court of Customs and Patent Appeals, like any other appellate court, is bound by the findings of fact made by the court below if there was substantial evidence to support those findings.

The second question is:

II. Did the "entered value" made under duress acquire binding force because the importer failed to make a "duress entry" when the conditions defined by Section 503(b) of the Tariff Act (19 U. S. C. A.) 1503(b) did not exist?

At R. 46 petitioner's president, Mr. McGehee, testified that at the time of the April entry, 1936, he did not know of any

> "similar case pending in reappraisements."

Also that he did not know about the case of *Arkell Safety Bag Co.* (a similar case) until about one year afterwards.

At R. 57 Judge Kincheloe who heard the testimony ruled

> "section 503(b) says there must be a pending case before there can be a duress entry."

Counsel for the government conceded that to be a correct ruling. At R. 52 Mr. Bobbitt, the deputy collector, testified that at the time of the April entry, the first one here involved,

> "I did not know of an appeal then pending."

On the same page he said that the collector took an appeal from the entry of March, 1936 (made by the importer at invoice price), but he said further that the Collector's appeal from that entry was not taken until after the April entry here in question.

Under 19 U. S. C. A., section 1501, the Collector had 60 days after the "Appraiser's report" on the March shipment within which to take his appeal.

On June 23rd, 1936, petitioner entered an appeal to reappraisement with respect to the April entry (see R. 39 and R. 54). Therefore the record is without conflict on the point that at the time of the April entry and at the time of the May entry and at the time of the June entry here in question no appeals to reappraisement were pending so far as was known by the importer or the customs officials. Moreover it was not possible for the petitioner as importer to have taken any appeal to reappraisement with regard to the April entry described in the first protest filed in this proceeding (R. 14, 17) because under 19 U. S. C. A., Section 1501, the importer must first receive

"written notice of appraisement"

from the customs officials, and must then act if at all in the taking of an appeal within 30 days after receipt of such notice. The printed record does not show when such notice was actually received by the importer, petitioner here, with regard to the April entry but the presumption arises that the first appeal entered by the petitioner of June 23rd, 1936, was less than 30 days after having received the statutory notice of appraisement. Therefore it was not possible for the petitioner to have entered any appeal on its own importations until *after* at least two entries had been made under duress as above shown. For like reasons it was not possible for the petitioner to have made any "duress

certificates" or so-called duress entries under the provisions of Section 503(b) of the Tariff Act, 19 U. S. C. A., section 1503(b), because no known appeal in a similar case was pending at the time of either of the first three entries here complained of.

The Customs Court (bottom R. 74) conceded that petitioner's auditor did not know of any pending appeal when the April entry was made and that he did not know about the *Arkell* case until after August 1936. The same concession was made as to Mr. McGehee, petitioner's president (bottom R. 76).

At R. 87 the Customs Court said:

> "We hold that, since there were no similar cases shown to have been pending for reappraisement or re-reappraisement, there was no justifiable basis for the duress entry."

and at R. 88 the Customs Court further said:

> "Both the government officers and the officials of the importing company testified that they did not know there was a test case pending on reappraisement at the time the entries in this case were filed."

Nevertheless the Customs Court proceeded to hold that the "entered values" though made under "moral duress" within the meaning of *Maxwell* v. *Griswold,* 10 How. 242, were binding upon the importer because of the last clause of Section 503(a) of the Tariff Act, 19 U. S. C. A., 1503(a), and in consequence that the court was powerless to give any relief. In arriving at this result the Customs Court (R. 87) said:

> "We overrule the plaintiff's claim in this case with extreme reluctance because we believe that the equities are all in favor of the importer."

When we turn to the opinion of the Court of Customs and Patent Appeals, page 3 (R. 90), we find this:

> "In making the entries the importer did not follow the provisions of section 503(b) of the Tariff Act of 1930, the so-called duress entry statute, and when the collector, on July 18, 1940, liquidated the six entries here involved he, evidently feeling himself bound by section 503(a) of the act, made liquidations upon the basis of the entered value which was higher than the finally appraised value."

In making that observation the Court entirely overlooked the showing contained in the evidence and in the opinion of the Customs Court to the effect that the conditions did not exist whereby the petitioner as importer could have made a so-called "duress entry." Again, at page 6 (R. 95) of the same opinion, we find this:

> "Mr. Bobbitt did state, in substance, that he did not know at that time (time of the April entry) and that Mr. McGehee did not know, of any pending test case, and that there was no conversation with regard to Mr. McGehee making a test case with respect to the April entry."

Nevertheless we find at page 8 of the same opinion (R. 97):

> "It was the duty of importer to protect its legal rights, which, as the trial court pointed out, it readily might have done by making a test case of the April 1936 entry."

The Court then attempted to give the petitioner some consolation by trying to place its omission on some lack of experience and lack of knowing the law, whereas under the undisputed facts of the record as above explained it was not possible for the importer to have taken any appeal on the April entry prior to written notice of appraisement and that according to the record it did not receive until

after May 23rd. In the opinion by Judge Keefe (bottom R. 66) he said:

> "The Appraiser advanced the entered price to equal 310 Swedish Kroner per 1000 kilos."

At page 33 of the record it appears that counsel for petitioner offered in evidence the record made in the reappraisement cases covering the six importations here involved but government counsel objected to that record and Judge Kincheloe (R. 34) sustained the objection. The record in those appeals to reappraisement showed the actual dates of the appraiser's reports and contained copies of the appraiser's reports and demands for additional duty. In the absence of those records we have by inference arrived at the fact that the appraiser's report on the April shipment was not made until after May 23rd. In order to clear up once for all this particular point as to the date of the appraiser's report we attach next below the original of the notice from Mr. Bobbitt, deputy collector, as received by petitioner under date of June 6th, 1936. The same is next attached:

(Here follows 1 photolithograph)

Customs Form 4981
TREASURY DEPARTMENT
ART. 863, C. R. 1931
Oct., 1931

NOTICE TO IMPORTER OF ADVANCE IN VALUE UPON APPRAISEMENT

United States Customs Service

DISTRICT NO. 18, PORT OF Jacksonville, Fla.

Collector's Office, June 5, 1935. WDD, 193

Sir:

The merchandise (kraft paper) entered by you under Cons.
(Kind of mdse.) (C. E., Free, or W. H.)
Entry No. Je307 dated April 17, 1936, 193 , per S. S.
TAMPA, has been appraised in accordance with law; the appraised value exceeds the entered value by 24 per cent.

Appeal from this appraisement, if dissatisfied therewith, must be filed with the Collector within thirty days after the date of this notice. (Section 501, Tariff Act of 1930.)

Respectfully,

K. R. Bobbitt,
Deputy Collector.
in Charge.

To Jacksonville Paper Co.,
808 West Bay St.,
Jacksonville, Fla.

U. S. GOVERNMENT PRINTING OFFICE: 1931 2—3565

As before stated, the petitioner took an appeal to reappraisement with regard to the April shipment on June 23rd, 1936, but necessarily this could not be done until receipt of notice of the appraisement. When the appeal to reappraisement was entered it then became the duty of the Collector to attach and file in the Court his own record as to the entries and also his demand for payment of additional duties and we attach next hereto the original of the demand for additional duties signed by K. R. Bobbitt, deputy collector, as received by the petitioner June 6th, 1936, which original demand is next attached:

(Here follows 1 photolithograph)

Customs Form 3293
TREASURY DEPARTMENT
Art. 311, C. R. 1931
Nov., 1932

NOTICE OF ESTIMATED DUTY DUE—DEMAND FOR PAYMENT OR RETURN OF UNEXAMINED PACKAGES

United States Customs Service

DISTRICT No. 15, PORT OF Jacksonville, Fla.,
Collectors, Office, June 5, 1936. WDD, *193*

Your invoice covered by Consumption Entry No. J-307, or Warehouse Bond No. - - - - - - - - - S. S. TAMPA,
Date April 17, 1936, has been returned by the appraiser on June 5, 1936, 193 , with an {~~xxxxxxxxxxxxxxxx~~ addition to make market value} and there is an estimated additional duty due the Government of $ 5982.72 add'l. Total $7228.47 1245.75 ins.

Unless this deposit is paid within ten days from date, you are hereby ordered to deliver to the United States Appraiser's Warehouse the following-described merchandise, covered by said invoice:

MARKS	NUMBERS	MERCHANDISE
JAX CABLE MADE IN SWEDEN		Kraft Paper.

In default of such delivery within twenty days from date, you are liable to liquidated damages in an amount equal to the invoice value plus the duty, as prescribed by Article 1256 (b), Customs Regulations of 1931.

H. R. Bobbitt,
Deputy *Collector.*
in Charge.

To Jacksonville Paper Co.,
808 West Bay St.,
Jacksonville, Fla.

2—8490

PLEASE PRESENT THIS NOTICE WITH RETURNED MERCHANDISE

U. S. GOVERNMENT PRINTING OFFICE: 1933

The record before the Customs Court on the appeal as to the April shipment also had endorsed thereon, as is now stated in Judge Keefe's opinion (R. 66), that the importer's "entered value" was equal to 285 Swedish Kroner per 1000 kilos less cash discount. The same entry also noted that the appraiser's advance was equal to 310 Swedish Kroner per 1000 kilos. All these things appeared by the Court's own record as to this very subject-matter and therefore the Court which reviewed the protests here involved could and should have taken judicial notice thereof. It is clear therefore from the record made in the appraisement cases as also from the opinion of Judge Keefe handed down therein February 26th, 1940 (R. 66, et seq.), that the importer's hands were tied by the nonaction of the Customs officials from April 17th, 1936, to June 5th, 1936. Therefore in the very nature of the case the petitioner as importer was not in position to have made any test case of the April entry until after June 6th, 1936, the date the notice of appraisement was received and under Section 501 of the Tariff Act it was entitled to take an appeal within thirty days thereafter. It is thus very clear that the petitioner was not in any respect remiss in doing anything which the Statute authorized for the protection of its own interest.

For similar reason the petitioner had no power to forthwith make a so-called duress entry by making out a "duress certificate" under Section 503 (b) of the Act, because it is conceded by both of the courts below that neither the importer nor the customs official knew of any case

> "then pending on appeal for reappraisement or rereappraisement."

The petitioner's hands were tied by the terms of the Statute and the failure of the Customs officials to give

> "Written notice of appraisement"

even as to the April entry, until after June 6th, 1936. In such circumstances it was not possible for the petitioner by any action or nonaction to relieve itself of the actual duress or "moral duress" existing at the time of the April entry and at the time of the May entry and at the time of the June entry imposed by the Customs officials.

The third question is:

III. Did the United States Customs Court have jurisdiction or power to order a reliquidation of the duties on the legal invoice basis even though that basis was lower than the "entered value" when it clearly appeared from the record and was so found by the court that the importer made the "entered values" in question under duress imposed by the Collector of Customs?

As before stated, the Customs Court agreed with the petitioner on the facts as to the matter of duress (see opinion bottom R. 83, top R. 84). In addition the record clearly shows that in March, 1936, prior to the beginning of the six entries here in litigation this importer had received a shipment of the same kind of paper from Sweden and the same had been entered at invoice price less nondutiable deductions and so, when the six entries here in question began in April, 1936, the importer insisted that the entries be made on the same basis, but the Collector of Customs informed the importer that entries on that basis would not be accepted and the merchandise would not be delivered unless the entries were made at a higher value supposed to represent the foreign market value. Such are the allegations of the several protests involved in this proceeding (R. 14 to 31). The evidence fully sustained those allegations and the opinion of the Customs Court agreed that the allegations were sustained (see recitals of evidence R. 73, 78, last paragraph R. 83, first half R. 84). Subsequently, as appears by the decision of Judge Keefe of the

Customs Court (R. 66 to 69) it was clearly determined that the invoice value, also known as the export value, was the correct dutiable value as applied to each of the six importations here in question. The importer under duress imposed by the Customs officials made each of the six entries at the rate of 285 Swedish Kroner per 1000 kilos as the supposed foreign market value, whereas the Appraisers finally came in pursuant to 19 U. S. C. A., Section 1501, and beginning June 5th, 1936, undertook to raise the alleged foreign market value to 310 Swedish Kroner per 1000 kilos. Judge Keefe held that there was no foreign market value because that market was a controlled market. Therefore the export value or invoice value was the only correct dutiable basis less certain nondutiable charges. That basis was $2.60 per hundred as contended for by the importer from the outset. The United States Customs Court, Third Division, as appears by its decision (R. 72 to 88) conceded the correctness of Judge Keefe's decision as to the dutiable values. Neverthless the Court concluded that it was bound by the language of Section 503(a) of the Tariff Act and therefore could not give the importer the benefit of the true export or invoice values because the "entered value" was the "higher" value.

The Court of Customs and Patent Appeals affirmed the decision of the Customs Court on two grounds. First, that there was in fact no duress. Second, that the importer failed to avail itself of the supposed privilege of making a duress entry as the means of protecting its rights. We have already pointed out that the second ground was untenable because neither the importer nor the Customs officials knew of any pending case and because the importer had no means of taking any appeal with respect to its own entry of April, 1936, until after the Appraiser's report came in and that did not occur until June 6th, 1936. Nevertheless the appellate court as also the Customs Court concluded that it had

no power to give the importer any relief. On the next to the last page of the opinion of the Court of Customs and Patent Appeals it is said:

> "Neither the United States Customs Court nor this court has been clothed with the authority of courts of equity, but, even if they were, the situation here is not one in which the plain language of the statutory law could be disregarded."

In the concluding part of the same opinion the Court said:

> "The importer has paid moneys to the Government in excess of the amount which would have been required of it upon the basis of the final reappraisements. That fact would incline us to give the importer the relief it seeks if we felt it within the scope of our authority so to do, but, for the reasons stated, we feel that we are without such authority."

So it is that both courts below have conceded the justness of petitioner's cause but both courts have denied relief by putting what we believe are erroneous constructions on the Tariff Act of 1930.

Basis of Jurisdiction.

The basis of this Court's jurisdiction to review the decision of the United States Court of Customs and Patent Appeals is Section 195, Judicial Code, as amended by the Act of June 17th, 1930, now 28 U. S. C. A., Section 308; also Rules 42 and 38 of this Court. The United States Customs Court denied all relief to the petitioner on a jurisdictional ground and the United States Court of Customs and Patent Appeals affirmed that decision by arriving at a different factual basis on which account the said decision of the United States Court of Customs and Patent Appeals is final subject to review only by writ of certiorari from this Court. *Cottman Co.* v. *Dailey,* 20 F. Supp. 142, affirmed 94

Fed. 2d, 85. *U. S.* v. *M. Rice & Co.*, 257 U. S. 536, 66 L. Ed. 357.

Questions Presented.

In the statement of the matters involved we have already presented the three questions, the answers to which will bring about a solution of the matters dealt with by the courts below.

Reasons Relied On for Allowance of the Writ.

1. A Definite and Authoritative Rule Should Be Announced by this Court Defining the Limitations of Power of the Court of Customs and Patent Appeals in Reviewing Findings of Fact Made by the United States Customs Court.

We find from annotations under 28 U. S. C. A., Section 308, that several cases have come to this Court on certiorari from the Court of Customs Appeals but those decisions were rendered prior to the Act of June 17th, 1930, redefining the prior law on the subject of customs appeals, including an amendment of what was Section 195, Judicial Code. Since that act went into effect we find a number of decisions by this Court reviewing decisions of the Court of Customs and Patent Appeals but apparently they were principally if not all infringement suits involving patents. So far as we have been able to find no decision has been rendered by this Court stating any limitation of the Court of Customs and Patent Appeals in the matter of reviewing questions of fact found and determined by the Customs Court either in an infringement suit or a case involving customs duties. The decision of the Court of Customs and Patent Appeals sought to be reviewed turns to a large extent upon a question of fact where that Court reached an opposite conclusion from the findings and determinations from the Customs Court. Such a result is contrary to the rule announced by this Court in the case of *McCaughn* v. *Real Estate Land T. & T.*

Co., 297 U. S. 606, 608, 80 L. Ed. 879, 881. The *McCaughn* case was a suit against the Collector of Internal Revenue to recover an alleged excess payment of Federal estate tax. The suit was therefore of the same nature as the protest proceedings here involved and therefore if the rule announced in the *McCaughn* case was binding on the Circuit Court of Appeals the same rule ought to apply and be binding upon the Court of Customs and Patent Appeals when reviewing a decision of the Customs Court, but apparently this Court has never made any pronouncement to that effect.

2. *The Courts Below Have So Construed Section 503, Subsections (a) and (b) of the Tariff Act as to Hold That the "Entered Value" Made Under Duress Became Binding Upon the Importer Because the Importer Failed to Make a "Duress Entry" Even Though the Conditions Defined by Said Section 503(b) Did Not Exist.*

No such result was ever approved under prior law. The question then is did Congress by the Tariff Act of 1930 intend to make possible such result. We think the public importance of such a question is obvious and that an authoritative decision by this Court is warranted.

3. *The Decision of the Court Below to the Effect That the Tariff Act Had Given Them No Adequate Power to Afford Relief Even Though Petitioner Was Abundantly Entitled Thereto Is in Conflict with Decisions of Several Circuit Courts of Appeal and Also in Conflict with a Prior Decision of the Court of Customs and Patent Appeals.*

In *Riccomini* v. *United States*, 69 F. (2d) 480, the Ninth Circuit Court of Appeals held that the United States District Court had no jurisdiction to allow a recovery of customs duties alleged to have been exacted under an unconsti-

tutional statute. That by Sections 514 and 515 of the Tariff Act of 1922, and by Section 195, Judicial Code, the Customs Court had been given complete and exclusive jurisdiction to determine such constitutional question and all other questions

> "including exactions of whatever character as to the rate and amount of duties chargeable under any provision of the customs revenue laws. Further, every such decision, order, and finding of a collector may be protested and reviewed."

In *Cottman Co.* v. *Dailey*, 94 F. (2d) 85, (4 C. C. A.) the importer sought to enjoin the Collector from assessing a special duty on certain phosphate rock. The court, speaking through Circuit Judge Parker, held that the district court had no jurisdiction because Congress by the Tariff Act of 1930 had vested in the Customs Court and the Court of Customs and Patent Appeals a

> "complete system of corrective justice regarding matters arising under the customs laws."

In *Patchogue-Plymouth Mills Corp.* v. *Durning*, 101 F. (2d) 41, (2 C. C. A.) the importer sued the Collector in the United States District Court to recover with interest certain duties paid on imported goods. The court, speaking through Circuit Judge Chase, held that the district court was without jurisdiction on the ground that the jurisdiction of the Customs Court was complete and exclusive, citing the *Cottman* case, *supra*, and the *Riccomini* case, *supra*.

The case of *David L. Moss Co.* v. *United States*, 103 F. (2d) 395, was a decision by the Court of Customs and Patent Appeals. The opinion was delivered by Circuit Judge Parker of the Fourth Circuit, who sat in the place of Judge Jackson. The importer, Moss & Company, had filed a protest under Section 514 of the Tariff Act (the same procedure

as here) against the Collector's liquidation and assessment of duty made on the importation of dried egg albumen. The Court of Customs denied relief on the ground that it was without authority to review and reverse the findings of fact made by the Tariff Commission when supported by substantial evidence. Judge Parker, speaking for the court, approved that result and again set forth the proper construction, purpose and intent of the Tariff Act as follows:

> "The court is a court of law, and it is granted full power to relieve against illegality in the assessment or collection of duties. 19 U. S. C. A. Sections 1515, 1518. If relief may not be had before it against illegal action under the flexible tariff provisions, relief may not be had anywhere; for its jurisdiction in such matters is exclusive. It is the tribunal established by Congress in the provision of a complete system of corrective justice for the administration of the customs laws, and questions involving the validity of official action in the imposition and collection of duties are properly cognizable before it to the exclusion of other courts. Cottman Co. *v.* Dailey, 4 Cir., 94 F. 2d 85, 88; Riccomini *v.* United States, 9 Cir., 69 F. 2d 480, 484; Gulbenkian *v.* United States, 2 Cir., 186 F. 133, 135; Nicholl *v.* United States, 7 Wall. 122, 130, 19 L. Ed. 125. There can be no question but that courts must exercise the judicial power vested in them to determine the legal validity of administrative action, where the validity of such action is involved in questions properly before them, whether they have been granted the right of review over action of the administrative agency or not. The duty necessarily arises because of their obligation to decide cases before them according to law. See Shields *v.* Utah Idaho Cent. R. R. Co., 305 U. S. 177."

The decisions of the Customs Court and of the Court of Customs and Patent Appeals disclaiming power to give petitioner relief in the cases at bar cannot be reconciled with

the four cases last above cited. This Court should settle the conflict.

WHEREFORE petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Court of Customs and Patent Appeals commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein a full and complete transcript of the record and all proceedings in the cases numbered on its docket Customs Appeals Nos. 4395, 4396, 4397, 4398, 4399 and 4400, entitled as consolidated, Jacksonville Paper Company, a corporation, Appellant, *versus* The United States, Appellee, and that the judgment and decree of said United States Court of Customs and Patent Appeals in said causes be reversed by this Court and that the petitioner have such other and further relief in the premises as to this Court may seem just.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1076

JACKSONVILLE PAPER COMPANY, A CORPORATION,
Petitioner,

v.

THE UNITED STATES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

We have lately inquired of West Publishing Company and received the information that the opinion of the Court of Customs and Patent Appeals has not been reported for printing, but a copy of the opinion handed down March 1st, 1943, now appears as part of the complete Transcript of Record as certified by that Court.

Jurisdiction.

The basis of this Court's jurisdiction has been previously pointed out in the foregoing petition and is primarily based upon 28 U. S. C. A., Section 308, together with Rules 42 and 38 of this Court.

Matters Involved.

The first section of the foregoing petition states the three primary matters involved and then gives an explanation of each, hence there need be no repetition in this supporting brief.

Assignments of Error.

1. The United States Court of Customs and Patent Appeals erred in undertaking to reverse the Customs Court on the latter Court's findings of facts relating to the subject of duress when it clearly appears that there was ample substantial evidence to support the findings of the Customs Court.

2. The Court of Customs and Patent Appeals erred in so construing 19 U. S. C. A., Section 1503 (a) (b) as to hold that the "entered values" here in question were not made under duress because the importer could have made "duress entries" even though the conditions named in the Statute for the making of such duress entries did not exist.

3. The Court of Customs and Patent Appeals as also the Court of Customs erred in holding that neither of said statutory courts had power under the provisions of the Tariff Act of June 17th, 1930, to give the petitioner as importer any relief for excess moneys paid to Customs officials under duress imposed by such officials.

ARGUMENT.

Point I—The Court of Customs and Patent Appeals was without authority to weigh the evidence produced by the parties before the Customs Court and thereupon reverse the findings of fact made by the latter court on the subject of duress and other related questions, findings as to which were made by the Customs Court.

The case of *McCaughn* v. *Real Estate Land T. & T. Co.*, 297 U. S. 606, 80 L. Ed. 879, 881, clearly sustains this point.

The Court of Customs and Patent Appeals has in several cases held itself bound by the same rule. *May Company* v. *U. S.*, 17 Ct. Cust. & Pat. App. 190. *U. S.* v. *Wheeler, Elder & Elder*, 17 Ct. Cust. & Pat. App. 279. *U. S.* v. *Allenby & Co.*, 20 Ct. Cust. & Pat. App. 80. In the cases at bar, however, the Court of Customs and Patent Appeals did not abide by the settled restriction above pointed out.

Counsel for the United States by Point I of brief filed in the Court of Customs and Patent Appeals contended

> "The finding of the lower court that the customs officials coerced appellant is against the weight of evidence."

Counsel for the United States then proceeded to make his own analysis of the evidence given before Judge Kincheloe of the Customs Court and contended that on account of lack of experience and misunderstanding of the law on the part of petitioner's president and auditor their positive testimony should be discounted and the greater weight given to the contradictory testimony of the deputy collector, Mr. Bobbitt and of the acting appraiser, Mr. Diamond. The Court of Customs and Patent Appeals followed the line of reasoning proposed by counsel for the United States and arrived at the conclusion now found on the next to the last page of the opinion:

> "Owing to the fact that we do not find that there was any duress in this case, it is unnecessary to discuss the principles announced in those cases." (Meaning *Maxwell* v. *Griswold*, and other decisions by this Court.)

The Court of Customs and Patent Appeals, like counsel for the United States, undertook to find and conclude that the president and the auditor of petitioner were simply misinformed as to the law and misunderstood what the Customs officials tried to explain. That sort of conclusion is not

justified by the record. The Customs Court by its opinion (bottom R. 83) said:

> "They (meaning petitioner's president and auditor) testified unqualifiedly that they attempted to enter the goods covered by entry J-307 at the invoice prices which represented the export values of the merchandise, which values were afterwards found upon reappraisement to be the correct dutiable values of the paper, and the customs officers refused to accept entry on that basis but required them to enter the goods on the basis of foreign value under threat that otherwise the merchandise would be subject to the assessment of additional duties for undervaluation."

This shows the nature of the evidence given by petitioner's president and auditor and that they knew exactly what they were talking about. Not only so, but when petitioner's president was on the witness stand, as appears (R. 48), he explained about having written the Deputy Collector a letter under date of May 13th, 1936, explaining why petitioner contended for the export value or invoice value as the proper basis for the entries on these shipments. That letter was filed in evidence as Exhibit 5 and is shown (R. 71-72). It refers to the May shipment scheduled to arrive in Jacksonville about that date and proceeds to say that the letter was written as notice of protest pursuant to resolution formally adopted by the Swedish Paper Mills Association some weeks before the date of the letter. The letter then quotes a memorandum made up by that Association pointing out that there was no foreign market value for American importers because the Swedish home market was a controlled market. Therefore only the export value should be regarded as the proper dutiable value on importations to the United States. Nevertheless the record, as previously shown, is clear that the Deputy and his appraiser

made no report even on April shipments until June 5th, 1936, nearly a month after the date of this letter. By that appraisement, according to copy of notice which is included in the foregoing petition, the appraiser and the Deputy Collector ignored the information contained in the memorandum of the Swedish Paper Mills Association and still contended for an alleged foreign market value 24 per cent higher than the supposed foreign market value which they had required the petitioner to show by the entries as actually made before possession of the merchandise would be surrendered. That letter shows that the petitioner and its officers were fully informed of the correct basis and that they so advised the Customs officials but the Customs officials arbitrarily stood by their guns and continued to do so until they were reversed by Judge Keefe's decision in February, 1940, as now shown by his opinion (R. 66 to 69). In a further effort to support the Customs officials the Court of Customs and Patent Appeals, as appears by page 6 (R. 95) of that Court's opinion, said:

> "Mr. Bobbitt, in particular, gave testimony to the effect that Mr. McGehee was told respecting the matter of a 'duress certificate' at the time the April entry was under discussion."

There was testimony to that effect by Mr. Bobbitt but that again shows that he himself didn't have a clear understanding of the Tariff Act because he confessed that he knew nothing about any case pending on reappraisement until after August, 1936, and the proof shows that petitioner's president and auditor knew of no pending case. Therefore there was no pertinent basis for any discussion of a duress certificate. None was possible under the limitations imposed by the Statute. In any case it was not the province of the Court of Customs and Patent Appeals to thus undertake to

tear down and reverse the findings of fact made by the Customs Court and then use its own findings of fact as a basis for applying what that Court conceived the law to mean.

Under the facts as they existed and as they were found by the Customs Court, the petitioner as importer was subjected to "moral duress" as a result of which it was prevented from making entries at the correct export value which was also the invoice value, and the petitioner in effect was compelled to make an entry at the supposed foreign market value in order to get possession of its goods. This constituted moral duress within the meaning of this Court's decision in *Maxwell* v. *Griswold*, 10 How. 242, 255, and *Robertson* v. *Frank Brothers Co.*, 132 U. S. 17, 23. An entry made under duress is involuntary and the payment of duties on the basis of such an entry is involuntary, giving the importer a right to recover payments in excess of lawful requirements. *Maxwell* v. *Griswold, supra. Robertson* v. *Frank Brothers Co., supra. Sinclair Navigation Co.* v. *U. S.*, 32 F. (2d) 90, 61 Corp. Juris, pages 992-993.

Point II—The illegal "entered values" at the supposed foreign market values were voidable on account of duress and said entered values acquired no binding force on account of petitioner's omission to make "duress" entries when the conditions defined by Section 503(b) of the Tariff Act did not exist.

This is a restatement of Question II set forth and discussed in the foregoing petition.

The brief of government counsel filed in the Court of Customs and Patent Appeals, page 15, says:

> "It is immaterial whether either or both parties had such knowledge since appellant failed to file the necessary duress certificates."

On the next page of the same brief government counsel says:

> "Duress cannot be predicated on ignorance of the law notwithstanding anything a Government official may say or do."

We hope that this Court will see fit to render a decision in this case and if so, then both sides of this controversy will be better informed. As we now read Section 503(b) of the Tariff Act, a "duress certificate" can be made by an importer only if he knows of some case then pending on reappraisement or re-reappraisement. Such is the language of the Act. Moreover the Court of Customs and Patent Appeals in the case of *Bernstein* v. *U. S.*, 18 C. C. P. A. 460, expressly held that the importer must know at the time of making the duress entry that a case is pending on reappraisement similar to his own and the similar case must be specified in the duress certificate filed by him. Otherwise such a certificate is of no avail. Admittedly neither the importer nor the Customs officials knew of any pending case and this was stated as an undisputed fact by the opinion of the Customs Court (R. 88, lines 2 to 5). Again, as previously pointed out, the petitioner was not able to create any appeal as to its own shipment of April 17th, 1936, until after June 6th, 1936, for the simple reason that not until the latter date did the petitioner receive statutory notice of appraisement provided for by Section 501 of the Tariff Act. The petitioner did take an appeal with respect to the April shipment on June 23rd, 1936, but before that time the petitioner had been subjected to the moral duress of the Customs officials with respect to the April shipment, the May shipment and the June shipment (see dates of entry on these three shipments, R. 14, R. 18 and R. 20). The excess payments required of petitioner on those three

shipments were respectively $1230.25, $1185.75 and $1592.25. (See protests R. 15, R. 19 and R. 21.)

As we have seen also the Customs officials continued to ignore the written protest of petitioner as set forth in the letter of May 13th, 1936 (R. 71) and continued to demand that entries made after that date be set up on the basis of the supposed foreign market value. Under the decision of the Court in the case of *Hecht* v. *Malley*, 276 Fed. 830, it was not necessary for the petitioner to personally interview and have a repetition of the heated argument with the Customs officials that took place with reference to the April shipment in order to have the benefit of the law on the subject of making entries under duress. The Customs officials knew the position taken by the petitioner at the outset and afterwards they received the letter of May 13th, and showed no signs of relenting from the position which they initially took with regard to the April shipment.

It may be noted also that Section 503(b) of the Tariff Act did not impose any duty on the petitioner as importer to make any duress certificate with regard to shipments entered subsequent to June 23rd, 1936, for the purpose of neutralizing the arbitrary conduct of the Customs officials theretofore demonstrated.

Section 503(a) of the Tariff Act makes the "entered value" binding on the importer if same is the "higher value" upon the theory of estoppel. But before the doctrine of estoppel can operate the "entered value" must have been voluntary and must have been made by the importer with knowledge of facts which would have enabled him to avoid the effect thereof. Furthermore the Customs officials must have been misled by such entry and must have acted thereon to their prejudice. Such are the well recognized elements of estoppel defined in Pomeroy's Equity Jurisprudence, 4th Edition, Section 805. Here the entries were

not voluntary. On the contrary they were made under duress. The importer knew of no pending case. Neither did the Customs officials. The Customs officials acted arbitrarily and in the face of the letter of May 13th (R. 71). They were not misled nor prejudiced by any act of petitioner.

An entry under duress is in law no entry and has no binding force on the importer. *Matter of Kridel*, Treas. Dec. 37209, *Erhardt* v. *Winter*, 92 Fed. 918, 25 C. J. C., page 253.

Duress, like fraud, vitiates everything it touches. Duress vitiates "entered value." *Maxwell* v. *Griswold*, 10 How. 242. Likewise

> "A release executed under duress is void or voidable."

45 Am. Jur. 690. *Ingram* v. *Lewis*, (10 C. C. A.) 37 F. (2d) 259, 70 A. L. R. 702, certiorari denied 282 U. S. 842.

> "If payment is made under implied duress as well as under protest the right of recovery is unquestionable."

61 C. J. 993. A taxpayer's waiver procured by duress is not binding. *Pictorial Printing Co.* v. *Com. Internal Rev.*, (7 C. C. A.) 38 F. (2d) 563. *Panther Rubber Mfg. Co.* v. *Com. Internal Rev.*, (1 C. C. A.) 45 F. (2d) 314.

The Customs Court, speaking through Judge Keefe (R. 66 to 69) determined that there was no foreign market value applicable to these importations. That the export values or invoice values were the only legal values. The Customs Court, Third Division, found (R. 83-84) that the entries as made were the result of moral duress imposed by the Customs officials. When those two elements were combined—illegality plus duress—the "entered value" no longer existed for any enforceable purpose. They were as if canceled by decree in equity on account of illegality and duress, yet both courts below held that the "entered values" were

still alive and binding on petitioner to the exclusion of the correct invoice values tendered and insisted upon at the time the entries severally were made.

Point III—The Customs Court had ample authority under Section 514 and related portions of the Tariff Act to order a reliquidation of the six entries in question on the basis of the legal and correct invoice values.

The Court of Customs and Patent Appeals by the last two pages of its opinion held that neither the Customs Court nor the Court of Customs and Patent Appeals was vested with equity powers. The court seemed to be of the view that "entered values" must stand and be in force unless canceled by some other court having equity powers and that the Customs Court was so limited in authority that no correction or reliquidation could be authorized on the legal invoice basis.

Such a construction of the Tariff Act of 1930 is contrary to the four decisions cited and quoted on the last three pages of the foregoing petition, beginning with the *Riccomini* case, 69 F. (2d) 480, to and including the *Moss Company* case, 103 F. (2d) 395. The opinion of Judge Parker in the *Moss Company* case quoted on the last page of the foregoing petition fully sustains our contention as to the scope of the authority and power of the Customs Court.

Under the old law petitioner could have recovered the illegal exactions here in question by a suit at law against the Collector filed in the United States District Court. In lieu of that remedy Congress next passed the Customs Administrative Act vesting broad powers in a Board of General Appraisers. The provisions of that law were superseded by the Act of 1922 and further superseded by the Act of June 17th, 1930, whereby the United States Customs Court and the United States Court of Customs and Patent Appeals were created as judicial tribunals to have complete

and exclusive jurisdiction regarding matters arising under the Customs Laws. As held by Circuit Judge Parker in two of the cases cited in the latter part of the foregoing petition, Congress by the Act of 1930 set up a

> "complete system of corrective justice for the administration of the customs laws."

and made the jurisdiction of the Customs courts exclusive in that behalf.

We therefore submit that there was no lack of power in the courts below to give petitioner the relief which it demanded by the protests which were duly filed as now set out, pages 14 to 31 of the Record. Both of the courts below readily conceded the justice of petitioner's demands but refused relief on the supposed ground of want of power so to do.

We now respectfully submit that the matters aforesaid amply warrant the issuance of writ of certiorari and petitioner humbly prays that the same may be issued to the end that the decision and judgment of the Court of Customs and Patent Appeals may be reviewed and reversed.

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ADDENDA.

In further support of Point I of the foregoing brief, page —— supra, we cite the last sentence of Sec. 1501, 19 U. S. C. A., which reads as follows:

"The decision of the United States Customs Court shall be final and conclusive upon all parties unless an appeal shall be taken by either party to the Court of Customs and Patent Appeals *upon a question or questions of law only* within the time and in the manner provided by section 310 of Title 28." (Italics ours.)

The same language was retained when that section was amended by Act of June 25th, 1938 (see cumulative pocket supplement 19 U. S. C. A., Sec. 1501). In the case of *U. S.* v. *Collin & Gissel*, 123 Fed. 2d 147, the Court of Customs and Patent Appeals conceded the statutory rule binding upon that Court. Nevertheless the rule was not observed in the instant case.

In further support of Point II of the foregoing brief, stated page — supra, and to be regarded as inserted just prior to Point III of the foregoing brief, page — supra, we cite first: Section 402 (a) (1) of the Tariff Act of 1930, now 19 U. S. C. A., Section 1402 (a) (1) reading:

"(a) For the purposes of this chapter the value of imported merchandise shall be—(1) the foreign value or the export value, whichever is higher."

This has been construed to mean that where there is no "foreign value" then only the "export value" can be considered as the dutiable value. *U. S.* v. *Wiener*, 15 C. C. A. 428. Likewise if, on account of duress and no "foreign market value", there was no enforceable "entered value" such as contemplated by Section 503 (a) of the Tariff Act, 19 U. S. C. A. 1503 (a), then only the export or invoice value can be considered as the correct dutiable value for purposes of liquidation or reliquidation under court order.

We also cite in support of Point II supra, the case of *Hoeninghaus* v. *U. S.*, 172 U. S. 622, 627, 43 L. Ed. 576, 578, last half first column, and *Daloz* v. *U. S.*, 171 Fed. 275. In

the *Hoeninghaus* case this Court emphasized the point that the burden and duty rests upon the importer to carefully ascertain the correct dutiable value and then make an entry accordingly. This Court also observed that the statutes then in force took care

"to relieve an importer from a hasty and ill-considered valuation contained in the invoice by giving him an opportunity to raise such valuation by *voluntarily* making such addition thereto as to bring the same to the actual market value." (Italics ours.)

Thus it has been determined by this Court that an "entered value" has no binding force for any purpose if it be not "voluntarily" made by the importer. The *Daloz* case supra called attention again to the duty resting upon the importer to ascertain and make his entry according to a true dutiable valuation. The importer voluntarily made a mistake and because the mistake was *voluntarily* made no relief was given. By the petition for review of the decision of the Board of General Appraisers then performing functions now performed by the Customs Court, the importer alleged not only mistake but claimed the entry was made under duress. The decision of the Board said:

"No testimony was submitted to show duress."

Had duress been shown before the Board as was shown before the Customs Court here, the importer would undoubtedly have been given relief. At least such is the intimation from the opinion of Circuit Judge Colt who rendered the decision on appeal.

If Section 503 (a) of the Tariff Act can be construed as was done in the courts below, to make the "entered value" binding, although made under duress and not by the voluntary action of the importer, then the Act will at once become an instrument of oppression and spoliation of property. Congress did not so intend.

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Questions Presented	2
Statement	2
Argument	5
Conclusion	9
Appendix	11

CITATIONS

Cases:	
Maxwell v. *Griswold*, 10 How. 242	9
Robertson v. *Frank Bros. Co.*, 132 U. S. 17	9
United States v. *Jacksonville Paper Co.*, 4 Cust. Ct. 662	3
Statutes:	
Act of February 26, 1845, 5 Stat. 727	9, 11
Judicial Code:	
Sec. 187 (a), 28 U. S. C., sec. 296	5
Sec. 195, U. S. C., title 28, sec. 308	5, 12
Tariff Act of 1930, 46 Stat. 590:	
Sec. 402 (c), U. S. C., title 19, sec. 1402 (c)	3, 12
Sec. 402 (d), U. S. C., title 19, sec. 1402 (d)	2, 12
Sec. 489, U. S. C., title 19, sec. 1489	7, 13
Sec. 501, U. S. C., title 19, sec. 1501	5, 15
Sec. 503 (a), U. S. C., title 19, sec. 1503 (a)	3, 6, 7, 18
Sec. 503 (b), U. S. C., title 19, sec. 1503 (b)	3, 7, 18
Sec. 514, U. S. C., title 19, sec. 1514	5
Sec. 623, U. S. C., title 19, sec. 1623	8
Miscellaneous:	
Customs Regulations, 1937, Article 314	8

537961—43——1

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 89

JACKSONVILLE PAPER COMPANY, A CORPORATION, PETITIONER

v.

THE UNITED STATES, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court is reported in 8 Cust. Ct. 242, C. D. 615. The opinion of the United States Court of Customs and Patent Appeals is reported in C. A. D. 228, Treasury Decisions Advance Sheets April 15, 1943, page 39.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered in the United States Customs Court on April 17, 1943.

The petition for writ of certiorari was filed on June 7, 1943. The jurisdiction of this Court is invoked under section 195 of the Judicial Code, as amended, 28 U. S. C., Section 308.

STATUTES INVOLVED

The relevant provisions of the Tariff Act of 1930 and other statutes involved are set forth in the Appendix, *infra,* pp. 11–18.

QUESTIONS PRESENTED

1. Whether the Court of Customs and Patent Appeals improperly found facts contrary to the findings of the lower court.

2. Whether the express statutory provision that duties should be based on the value entered by the importer, when higher than the final appraised value, should be disregarded when the importer, unaware of legal remedies available to him, enters a value higher than he thought to be necessary because of pressure exerted by customs officials.

STATEMENT

In 1936, the petitioner imported several consignments of paper from Sweden and entered them at the port of Jacksonville, Florida. Petitioner contended that the proper basis for appraising the paper was the export value as defined in section 402 (d) of the Tariff Act of 1930 (p. 13, *infra*), which value was $2.60 per 100 pounds. (R. 14–31.) The Collector of Customs contended that the proper basis for appraising the paper was the foreign

value as defined in section 402 (c) of the Tariff Act (pp. 12–13, *infra*), which was considerably higher than the export value. After discussing the matter with representatives of the office of the collector the petitioner added to the export value of $2.60 per 100 pounds amounts sufficient to make the foreign value and entered the paper at the higher value. (R. 72–75.) The appraiser then appraised the paper on the basis of the foreign value. Thereafter the petitioner filed appeals to reappraisement in the Customs Court, and after a trial that court decided that the proper basis for appraising the paper was the export value, and then reappraised the paper at $2.60 per 100 pounds less 2 percent discount (R. 66–69). *United States* v. *Jacksonville Paper Co.*, 4 Cust. Ct. 662.

Notwithstanding the decision of the Customs Court, the collector, when liquidating the entries, assessed duty on the basis of the foreign or higher value entered by petitioner. This was done pursuant to section 503 (a) of the Tariff Act (p. 18, *infra*), which provides that ad valorem duties shall be assessed on the basis of the entered or the final appraised value, whichever is higher, unless the importer files a so-called duress certificate as permitted by section 503 (b) of the Tariff Act (p. 18, *infra*). Petitioner paid the higher duties and then brought the present suit in the Customs Court to recover a refund of duties, contending that it had entered the paper at the higher value under duress (R. 23–24).

There was sharp conflict in the testimony as to what occurred in the conversations between petitioner's representatives and the customs officers five years before (R. 42–65).[1] The Customs Court apparently concluded from petitioner's testimony that petitioner entered its merchandise at the higher value "under threat that otherwise the merchandise would be subject to the assessment of additional duties for undervaluation." It then expressely found that the weight of the evidence indicated that the customs officers influenced or required the importer to enter the paper at higher values than the correct dutiable value. (R. 83–84.) Although expressing the view that the influence exerted by the customs officers constituted moral duress, the court ruled that it must determine the rights of the importer strictly in accordance with the written law. The statute, it found, compelled the collector to assess duty on the entered value, since it was higher than the appraised value, and since a so-called duress certificate had not been filed. It thereupon entered judgment against the petitioner (R. 72–88).

The Court of Customs and Patent Appeals affirmed the judgment of the Customs Court (R. 99). It held that the influence exerted by the customs officers did not constitute legal duress and that the statute did not permit the granting of relief to the importer (R. 90–98).

[1] The hearing was held March 18, 1941 (R. 32).

ARGUMENT

1. Petitioner's argument that the Court of Customs and Patent Appeals had no authority to disturb the findings of fact of the Customs Court is clearly untenable. In the first place, the appellate court has such powers; Section 195 of the Judicial Code (28 U. S. C., Section 308, *infra*, p. 12) authorizes the Court of Customs and Patent Appeals to exercise appellate jurisdiction "as to the construction of the law *and the facts*" in cases involving the classification of merchandise and the rate of duty imposed. Petitioner has apparently been misled by the procedure in reappraisement cases prescribed in Section 501 of the Tariff Act of 1930 (19 U. S. C., Section 1501, *infra*, pp. 15–18); in such cases the importer appeals from one judge of the Customs Court to three judges of the same court, and from the decision of the three-judge court he may appeal to the Court of Customs and Patent Appeals only on "questions of law."[2]

[2] Except in reappraisement cases, the Customs Court sits in divisions of three judges, as it did here (Jud. Code, Section 187 (a), 28 U. S. C., Section 296). In a reappraisement case, the court merely determines the valuation of the goods but, since the duty has not been finally determined at that point, does not order repayment of any sums collected. Petitioner here is seeking to recover amounts claimed to be overpaid (R. 14–15), and its complaint was heard by three judges of the Customs Court, under Section 514 of the Tariff Act (19 U. S. C., Section 1514). Thus, although this case arises out of a dispute as to valuation, it is not an appeal to reappraisement under Section 501 but a protest, filed under Section 514, as to the amount of duties to be paid.

In any event, in the present case the Court of Customs and Patent Appeals did not overturn the findings of fact of the court below. The opinion shows that the appellate court accepted the factual finding that the petitioner was influenced by the customs officers to enter its merchandise at the higher valuation (R. 97). Its disagreement with the trial court was solely with respect to the conclusion of law reached by that court that the action of the customs officers was legally sufficient to constitute duress. The appellate court assumed the facts found by the trial court to be true, but reached the conclusion that those facts did not justify a holding that legal duress had been exerted, for the reason that petitioner had remedies other than the raising of the values both to obtain possession of its merchandise and to avoid any penalties that might be imposed. That this conclusion was correct will appear from a discussion of the merits of the case.

2. Section 503 (a) of the Tariff Act of 1930 provides that—

> Except as provided in section 562 of this Act (relating to withdrawal from manipulating warehouses) and in subdivision (b) of this section, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be the entered value or the final appraised value, whichever is higher.

In this case the entered value was higher than the final appraisal value, and petitioner did not bring

itself within any of the excepting clauses in the statute. Both lower courts accordingly held that the statute should be applied as it read and that petitioner must be assessed on the basis of the entered value.

The Customs Court indicated that petitioner's real grievance was that it regarded itself as forced to enter the goods on the basis of the higher foreign value in order to avoid the threat of additional duties for undervaluation (R. 83–84). But the very section of the statute which imposes the additional duties (Section 489, 19 U. S. C., Section 1489, *infra*, pp. 13–15) provides that they may be remitted if the Customs Court finds "* * * that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise. * * *" This is the customary method by which importers who challenge appraisements unsuccessfully but in good faith avoid the payment of additional duty.[3] Petitioner

[3] Under Section 503 (b) an importer may also avoid the effect of Section 503 (a) by filing a "duress" certificate that he has entered the merchandise at a high value because of advances in valuation made by appraisers in similar cases then pending on appeal; if the importer's contention is sustained in such other cases, and if his action was taken in good faith, the importer is not bound by his original entered valuation. In the present case, petitioner and the customs officers were both unaware that a similar case was pending in New York (R. 88).

was thus not required to overvalue his goods in order to avoid the making of extra payments.

Under the Act and Regulations an importer may obtain a release of merchandise from customs custody by filing an appropriate bond.[4] It does not appear that petitioner sought to obtain the release of its goods by this means, and it may be that petitioner did not understand its rights in this respect. The court below concluded that although the customs officials had not made clear to petitioner its legal rights, they had not misled petitioner (R. 96).[5]

It is thus plain that the present tariff law provides a complete system of corrective justice. Petitioner here had remedies available whereby it could have avoided the additional payments which it feared. The alleged threat as to the assessment of extra duties was effective only because petitioner was ignorant of the law. However desirable it may be for customs officials to advise citizens of all of their legal rights, their failure to leave petitioner with a correct "impression" (R. 97) can hardly justify disregard of the plain language of the statute.

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[4] Section 623, 19 U. S. C., Section 1623; Customs Regulations, 1937, Article 314.

[5] The customs officials testified that they had informed petitioner that the goods would be released if a sufficient bond were filed (R. 76–78), but this was denied by petitioner's witnesses (R. 78).

Petitioner urges that the statutory language is not binding when the higher value is entered under "duress." The court below, we submit, properly held that there was no duress, in view of the remedies available to petitioner. In any event, the cases upon which petitioner relies, *Maxwell* v. *Griswold,* 10 How. 242, and *Robertson* v. *Frank Bros. Co.,* 132 U. S. 17, do not justify the refusal to follow the plain language of the present law. Those cases arose under an early statute (5 Stat. 727, *infra,* p. 11), which made a protest at the time of payment a prerequisite to a suit against a collector for refund; this Court held that the payments of duties under factual circumstances somewhat similar to those in the case at bar were made under moral duress and were thus to be treated as under protest rather than voluntary. It was entirely reasonable, where the importer would otherwise be without remedy, to construe the word "protest" as reaching a definitely involuntary payment. The question here, however, is whether, when an importer has ample statutory protection, an exception should be read into a perfectly clear statute because the importer is unfamiliar with his legal remedies. The cases cited obviously have no bearing upon the latter problem.

CONCLUSION

The decision of the court below is sound, and the judgment is correct whether based upon the

decision of the Customs Court or that of the Court of Customs and Patent Appeals. There are no conflicts of decision, and the case presents no question of public importance. The petition should be denied.

Respectfully submitted.

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JULY 1943.

APPENDIX

Act of February 26, 1845, 5 Stat. 727:

> That nothing contained in the second section of the act entitled "An act making appropriations for the civil and diplomatic expenses of Government for the year one thousand eight hundred and thirty-nine," approved on the third day of March, one thousand eight hundred and thirty-nine, shall take away, or be construed to take away or impair, the right of any person or persons who have paid or shall hereafter pay money, as and for duties, under protest, to any collector of the customs, or other person acting as such, in order to obtain goods, wares, or merchandise, imported by him or them, or on his or their account, which duties are not authorized or payable in part or in whole by law, to maintain any action at law against such collector, or other person acting as such, to ascertain and try the legality and validity of such demand and payment of duties, and to have a right to a trial by jury, touching the same, according to the due course of law. Nor shall any thing contained in the second section of the act aforesaid be construed to authorize the Secretary of the Treasury to refund any duties paid under protest; nor shall any action be maintained against any collector, to recover the amount of duties so paid under protest, unless the said protest was made in writing, and signed by the claimant, at or before the payment of said duties, setting forth distinctly and specifically

the grounds of objection to the payment thereof.

Judicial Code, Sec. 195 (28 U. S. C. 308):

> The Court of Customs and Patent Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided, final decisions by the United States Customs Court in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classifications, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgments and decrees of said Court of Customs and Patent Appeals shall be final in all such cases: *Provided, however,* That in any case in which the judgment or decree of the Court of Customs and Patent Appeals is made final by the provisions of this title, it shall be competent for the Supreme Court, upon the application of either party, duly made as required by section 350 of this title, to require, by certiorari or otherwise, such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal to the Supreme Court.

Tariff Act of 1930 (46 Stat. 590):

> SEC. 402 (c):
> *Foreign Value.*—The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United

States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States. (19 U. S. C. 1402 (e).)

SEC. 402 (d):

Export Value.—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States. (19 U. S. C. 1402 (d).)

SEC. 489. ADDITIONAL DUTIES.

If the final appraised value of any article of imported merchandise which is subject to an ad valorem rate of duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the entered value, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per centum of the total final

appraised value thereof for each 1 per per centum that such final appraised value exceeds the value declared in the entry. Such additional duty shall apply only to the particular article or articles in each invoice that are so advanced in value upon final appraisement and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the final appraised value does not exceed the amount of duty that would be imposed if the final appraised value did not exceed the entered value, and shall be limited to 75 per centum of the final appraised value of such article or articles. Such additional duties shall not be construed to be penal and shall not be remitted nor payment thereof in any way avoided, except in the case of a clerical error, upon the order of the Secretary of the Treasury, or in any case upon the finding of the United States Customs Court, upon a petition filed at any time after final appraisement and before the expiration of sixty days after liquidation and supported by satisfactory evidence under such rules as the court may prescribe, that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise. If the appraised value of any merchandise exceeds the value declared in the entry by more than 100 per centum, such entry shall be presumptively fraudulent, and the collector shall seize the whole case or package containing such merchandise and proceed as in case of forfeiture for violation of the customs laws; and in any legal proceeding

other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he rebuts such presumption of fraud by sufficient evidence.

Upon the making of such order or finding, the additional duties shall be remitted or refunded, wholly or in part, and the entry shall be liquidated or reliquidated accordingly. Such additional duties shall not be refunded in case of exportation of the merchandise, nor shall they be subject to the benefit of drawback. All additional duties, penalties, or forfeitures applicable to merchandise entered in connection with a certified invoice shall be alike applicable to merchandise entered in connection with a seller's or shipper's invoice or statement in the form of an invoice.

Furniture described in paragraph 1811 shall enter the United States at ports which shall be designated by the Secretary of the Treasury for this purpose. If any article described in paragraph 1811 and imported for sale is rejected as unauthentic in respect to the antiquity claimed as a basis for free entry, there shall be imposed, collected, and paid on such article, unless exported under customs supervision, a duty of 25 per centum of the value of such article in addition to any other duty imposed by law upon such article. (19 U. S. C. 1489.)

SEC. 501. NOTICE OF APPRAISEMENT—REAPPRAISEMENT.

The collector shall give written notice of appraisement to the consignee, his agent,

or his attorney, if (1) the appraised value is higher than the entered value, or (2) a change in the classification of the merchandise results from the appraiser's determination of value. The decision of the appraiser shall be final and conclusive upon all parties unless a written appeal for a reappraisement is filed with or mailed to the United States Customs Court by the collector within sixty days after the date of the appraiser's report, or filed by the consignee or his agent with the collector within thirty days after the date of personal delivery, or if mailed the date of mailing of written notice of appraisement to the consignee, his agent, or his attorney. No such appeal filed by the consignee or his agent shall be deemed valid, unless he has complied with all the provisions of this Act relating to the entry and appraisement of such merchandise. Every such appeal shall be transmitted with the entry and the accompanying papers by the collector to the United States Customs Court and shall be assigned to one of the judges, who shall, after affording the parties an opportunity to be heard, determine the value of the merchandise. Reasonable notice shall be given to the importer and to the person designated to represent the Government in such proceedings of the time and place of the hearing, at which the parties and their attorneys shall have an opportunity to introduce evidence and to hear and cross-examine the witnesses of the other party and to inspect all samples and all papers admitted or offered as evidence. In finding such value affidavits and depositions of persons whose attendance can not reasonably be had, price lists and catalogues, reports or depositions of consuls, customs

agents, collectors, appraisers, assistant appraisers, examiners, and other officers of the Government may be admitted in evidence. Copies of official documents, when certified by an official duly authorized by the Secretary of the Treasury, may be admitted in evidence with the same force and effect as original documents. The value found by the appraiser shall be presumed to be the value of the merchandise and the burden shall rest upon the party who challenges its correctness to prove otherwise.

The judge shall, after argument on the part of any of the interested parties requesting to be heard, render his decision in writing together with a statement of the reasons therefor and of the facts on which the decision is based. Such decision shall be final and conclusive upon all parties unless within thirty days from the date of the filing of the decision with the collector an application for its review shall be filed with or mailed to the United States Customs Court by the collector or other person authorized by the Secretary of the Treasury, and a copy of such application mailed to the consignee, or his agent or attorney, or filed by the consignee, or his agent or attorney, with the collector, by whom the same shall be forthwith forwarded to the United States Customs Court. Every such application shall be assigned by the court to a division of three judges, who shall consider the case upon the samples of the merchandise, if there be any, and the record made before the single judge, and, after hearing argument on the part of any of the interested parties requesting to be heard, shall affirm, reverse, or modify the decision of the single judge or remand the case to the single judge

for further proceedings, and shall state its action in a written decision, to be forwarded to the collector, setting forth the facts upon which the finding is based and the reasons therefor. The decision of the United States Customs Court shall be final and conclusive upon all parties unless an appeal shall be taken by either party to the Court of Customs and Patent Appeals upon a question or questions of law only within the time and in the manner provided by section 198 of the Judicial Code, as amended. (19 U. S. C. 1501.)

SEC. 503 (a):

General Rule.—Except as provided in section 562 of this Act (relating to withdrawal from manipulating warehouses) and in subdivision (b) of this section, the basis for the assessment of duties on imported merchandise subject to ad valorem rates of duty shall be the entered value or the final appraised value, whichever is higher. (19 U. S. C. 1503 (a).)

SEC. 503 (b):

Entries Pending Reappraisement.—If the importer certifies at the time of entry that he has entered the merchandise at a value higher than the value as defined in this Act because of advances by the appraiser in similar cases then pending on appeal for reappraisement or re-reappraisement, and if the importer's contention in such pending cases shall subsequently be sustained, wholly or in part, by a final decision on reappraisement or re-reappraisement, and if it shall appear that such action of the importer on entry was taken in good faith, the collector shall liquidate the entry in accordance with the final appraisement. (19 U. S. C. 1503 (b).)

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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 1076. 89

JACKSONVILLE PAPER COMPANY, A CORPORATION,
PETITIONER,

VS.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS.

REPLY BRIEF FOR PETITIONER.

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SUBJECT INDEX

Questions Presented 1
Statement of Facts 2

Argument—

Point I. Trial court's finding of facts not reversible by appellate court 4

Point II. Entered value void when made under duress 10

Point III. Lower courts had ample power to give relief 11

Conclusion 11

Table of Authorities

McCaughn vs. Real Estate Land, etc., Co., 297 U. S. 606 9
Rule 52(a), Rules of Civil Procedure 9
19 U. S. C. A., Sec. 1501 9

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QUESTIONS PRESENTED.

At pages 2, 3 and 12 of our petition for certiorari we stated three questions for consideration. The government's brief, page 2, states two questions. First

> "Whether the Court of Customs and Patent Appeals *improperly* found facts contrary to the findings of the lower court."

This manner of stating the question implies a concession that the Court of Customs and Patent Appeals did find facts contrary to the findings of the trial court but did not do so "improperly." Our petition (pages 2 and 15) and our supporting brief (pages 22 and 26) took the straightout position that the Appellate Court found the facts contrary to the findings of the trial court on the subject of *duress* and that the Appellate Court had no authority so to do either under the statute or under the

general system of practice prevailing from time immemorial.

The second question as stated in the government's brief (page 2) is whether the importer should be bound by the "entered value" when that value was shown by the entry because

"unaware of legal remedies available."

We maintain that no such question is presented by the record in this case. We maintain that there was no such unawareness and that no remedies existed whereby the petitioner-importer was able to overcome the actual duress imposed by the customs officials. The real situation was stated by our questions II and III (pages 3 and 12 of our petition) and pages 26 to 31 of our supporting brief.

STATEMENT OF FACTS.

The "statement" contained in the government's brief (pages 2 to 4) is in some material respects erroneous.

In the first place, near top page 3, it is said:

> "after discussing the matter with representatives of the office of the collector the petitioner added to the export value * * * and entered the paper at the higher value."

The real record in this case is that it was not merely a matter of discussion. On the contrary it was a heated argument resulting from the demand of the importer to be permitted to make the entry on invoice basis and the refusal of the customs officials to accept any such entry (See testimony of Reinoehl, bottom R. 36 and bottom R. 42). Also testimony of McGehee (R. 45 to 49). Also testimony of Bobbitt (bottom R. 50 and top R. 51). Further on the subject of the heated argument see testimony of McGehee (R. 64 and 65).

The first half of page 3 of the government's brief also says

> "The appraiser then appraised the paper on the basis of the foreign value."

This statement is misleading for the reason that it implies that the appraisement followed shortly after the alleged discussion, whereas, the fact is that the appraisement on the entry of April 17th, 1936, did not come through until June 5th, 1936, as shown by photostatic copy of notice (page 8 of our petition) and photostatic copy of demand for return of merchandise (page 10 of our petition). During the interval between the date of entry and the date of the appraisement the importer had been required to give a "redelivery bond" (see testimony of Diamond, bottom R. 59) because all these entries were "consumption" entries (See testimony of Reinoehl, R. 40) and see copy of the entry that was refused on the April shipment (R. 16) and copy of the amended entry which the importer was compelled to make before it could get possession of the goods (R. 17). These matters will be somewhat amplified in the subsequent brief argument. Government counsel (page 4 of government's brief) concedes that the trial court

> "expressly found that the weight of the evidence indicated that the customs officers influenced or *required* the importer to enter the paper at higher values."

Neither the importer nor the customs officials knew of any test case pending whereby a "duress certificate" could have been filed (see R. 88).

The statement for the government passes over entirely the third question which we stated page 12 of our petition, which was in substance whether the trial court or the appellate court committed grievous error in disclaiming all power and jurisdiction to give relief though conceding that the importer was justly entitled to relief and that the entries had been made under duress.

ARGUMENT.

Point I. The Trial Court Correctly Found That the Entries Involved in These Protests Were Made under Duress and the Appellate Court Was Without Authority to Find Otherwise.

Since government counsel have attempted to dissipate the findings of the trial court on the ground of the importer's alleged ignorance and on the ground of alleged existing remedies whereby the duress could have been obviated we think it important to make a firsthand examination of what the testimony actually was and upon which the trial court based its findings.

To begin with, the testimony of Reinoehl (R. 34) and other witnesses is undisputed to the effect that the importation of March, 1936, was entered by the petitioner and accepted by the customs officials on the basis of "invoice value." Therefore when Reinoehl, auditor for the petitioner, and McGehee, the president of the petitioner, attempted to enter the importation of April, 1936, they naturally expected to make the entry on the same basis and were insistent upon so doing. At bottom R. 35 Reinoehl testified as to the April importation that he originally prepared the entry

"on the basis of the invoice price."

That form of entry was then put in evidence as Exhibit No. 2. At R. 36 the following question and answer were given concerning that form of entry:

"Q. When you presented that entry, Exhibit 2, will you state what transpired?

A. I was told by the customs officials they would not accept the entry on the basis of the invoice price but it must be based on the foreign market value and

that the paper (meaning the goods in question) would not be released until the entry was so made."

Further questions and answers then ensued.

"Q. Did you then prepare a different form of entry? A. I then prepared the entry on the foreign market value."

Copy of the new form of entry was then put in evidence as Exhibit 3. The protest with respect to the April importation appears R. 14 and 15 and Exhibits 1 and 2 to that protest were respectively the same as Exhibits 2 and 3 filed in evidence along with the testimony of Reinoehl. A comparison of those two exhibits shows that the importer was required to add $4,921 to the value in order to make the entered value $19,945 as representing the supposed "foreign market value." No foreign market value then existed as shown by Exhibit 5 (R. 71) and as later adjudged by the decision of Judge Keefe February 26th, 1940 (R. 66 to 69). The witness Reinoehl repeated his testimony in similar positive language (bottom R. 42) to the effect that the customs officials absolutely required the preparation and filing of a new form of entry using supposed foreign market value as the basis therefor. The witness McGehee, president of petitioner, gave equally positive testimony. At R. 45 he said:

"Mr. Reinoehl, our auditor, tendered the entry papers on this shipment (meaning the April importation) to the customs authorities, and he contacted me later stating that they had refused to let him enter this shipment of paper on the basis of the invoice price, and that they would not release the paper until the entry papers were amended to include what they considered to be the foreign market value, and the entry had been made on that basis."

The witness McGehee then details how, after notice from Reinoehl, he went to Mr. Bobbitt's office, the deputy collector, and talked with him and Mr. Diamond, acting ap-

praiser, for about an hour. He was asked these questions and made these answers:

> "Q. What did he say with reference to accepting that entry (meaning the April entry) on the basis of the invoice price?
>
> A. He said they would not accept it, or release the paper on that basis.
>
> Q. If you had been unable to receive delivery of this particular paper, what effect, if any, would it have had on the bag manufacturing plant of your company?
>
> A. It would have closed down within ten days."

This explains why all these entries were known as "consumption" entries (see exhibits to the first protest, R. 16 and 17). Again, from McGehee's testimony (pages 48 and 49) we find this on cross examination by government counsel:

> "XQ. Will you give us all of that conversation, please?
>
> A. Well, we contended that the proper basis for entry was the invoice price less the non-dutiable items, and we attempted to make the entry on that basis and we were told emphatically it would not be accepted.
>
> XQ. Your understanding was that unless you changed the entry to meet the views of Mr. Bobbitt and Mr. Diamond you could not get your merchandise?
>
> A. No understanding about it; they stated that emphatically.
>
> XQ. That was the only condition under which they would permit you to take delivery of the importation?
>
> A. That is correct."

The testimony of Mr. Bobbitt, the deputy collector (R. 50 and 51), in substance corroborates the testimony of McGehee. Among other things he said:

> "I remember, as Mr. McGehee will very readily recall, *that he said in so many words he resented customs officials having anything to do with the way he should file an entry and at what value he should file it.* * * * Mr. McGehee gave me the idea of being an excellent business man who had bought his goods at what he knew was a definite price, and *he intended to make entry at that price regardless of what might be the position of the United States customs officials,* or of any law or regulation governing it" (Italics ours).

This testimony showed very clearly that the whole controversy—the "heated conversation" (R. 51)—related to the *basis of value* upon which the entry should be made and not a question of the amount of the redelivery bond which would have to be given irrespective of the form of the entry or the value stated in the entry.

The testimony given by Mr. Bobbitt (top R. 53) is utterly inconsistent with other testimony given by him. He there claimed that he gave Mr. McGehee to understand

> "that he might take advantage of the duress provision by filing this duress certificate along with his entry"

whereas at R. 52 and elsewhere in the testimony of Bobbitt he admitted that he knew of no case pending on appeal which might have been used as the basis for filing a "duress certificate." Therefore the position heretofore taken by the government that some remedy existed by filing a duress certificate was wholly without support.

The witness Diamond undertook to claim that there was no controversy about the value for the entry but that the discussion related to the amount of the bond; that a new bond would have to be given for a higher amount, but at R. 59 he conceded that a "redelivery bond" had to be given in either case and the fact is that a redelivery bond was given as to each of these importations and when the

appraisements began to come through as evidenced by the notices contained in our petition (R. 8 and R. 10) the collector demanded a return of the merchandise if the importer failed to pay the additional amount of duty assessed on the higher supposed "foreign market" value. When Reinoehl was recalled in rebuttal (R. 62 and 63) he testified positively that the government officials did not at any time say they would accept the entry on invoice value if a bond in some larger amount was given. At bottom R. 63:

> "Q. Did you say they did not tell you you must put up a bond in a higher value?
>
> A. We did have to put up a bond at a higher value after the amendment, but we were not informed we could make the entry at the invoice price if the bond were placed at a higher value."

Mr. McGehee testified to like effect on rebuttal (R. 64 and 65):

> "Q. Did Mr. Bobbitt or Mr. Diamond inform you you could make the entry based on the invoice value provided you put up a bond in a sufficient amount?
>
> A. He did not * * * I told him if I wanted to import a load of bull frogs it was his job as a government official to provide the data under which I could make such importation and entry.
>
> Q. Did you get hot under the collar at that conversation?
>
> A. Yes."

R. 65, McGehee further said:

> "As a matter of fact, we were helpless. Mr. Bobbitt said so. * * * It is unbelievable what Mr. Bobbitt did, the attitude he took. * * * I didn't appreciate it a bit."

The letter filed in connection with the testimony of Reinoehl, Exhibit 5 (R. 71), also corroborates Reinoehl and McGehee because that letter clearly stated the basis of the importer's contention that it was entitled to make these

entries on the basis of invoice or export value. This was so because it had been determined by resolution of the Swedish Paper Mills Association that the Swedish market was a "controlled market." In passing, the letter shows that the petitioner's president and auditor were not so ignorant as government counsel claim. On the contrary they knew what their rights were and that brought on the "heated discussion" when the customs officials undertook to deny those rights. Nevertheless they were helpless and had to do as the customs officials demanded in order to get custody of the merchandise and prevent a shutdown in their business.

We submit therefore that the trial court was eminently correct in finding as stated bottom R. 83 that the customs officials refused to accept these entries on the basis of invoice values. The trial court was further correct in concluding that the weight of the evidence was with the testimony of Reinoehl and McGehee. Such being the case the appellate court had no authority to make findings to the contrary. In attempting so to do the court violated those principles laid down by this court in *McCaughn* v. *Real Estate Land, etc., Co.*, 297 U. S. 606, cited page 22 of our brief supporting the petition. The appellate court also violated the express language of 19 U. S. C. A., Sec. 1501, quoted in the addenda to our first brief and in addition the appellate court violated the principles now crystalized by Rule 52(a) of the Rules of Civil Procedure which among other things provides:

> "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

At page 6 of the government brief counsel say:

> "The appellate court assumed the facts found by the trial court to be true, but reached the conclusion that those facts did not justify a holding that legal duress had been exerted, for the reason that peti-

> tioner had remedies other than the raising of the values both to obtain possession of its merchandise and to avoid any penalties that might be imposed."

The only remedy suggested by the government's brief is found page 8 of the brief to the effect that the petitioner might have secured release of the merchandise by the filing of "an appropriate bond." It is then stated:

> "It may be that petitioner did not understand its rights in this respect."

That sort of argument cannot avail to dissipate the positive testimony given by Reinoehl and McGehee supported by the documentary evidence, nor can it dissipate the positive findings of fact made by the trial court. The evidence is very clear that the argument and the controversy did not have to do with the amount of any redelivery bond. On the contrary it had to do with the refusal of the customs officials to release the goods on any sort of bond unless the form of the entry was changed so as to show some supposed "foreign market value."

Point II. When, As Appears by the Evidence and the Findings of the Trial Court, the Entries in Question Were Made under Duress the "Entered Value" Was Void and Not Binding under 19 U. S. C. A., Sec. 1503(a).

This point was presented page 3 of our petition and discussed beginning page 26 of our brief supporting the petition. Government counsel make no reply to that portion of our argument nor do they make any comment on the cases relied upon by us as entitling the petitioner to relief under the protests filed in this case.

Point III. The Customs Court As the Trial Court and the Court of Customs and Patent Appeals As the Appellate Court Had Ample Authority and Jurisdiction under the Law to Give the Petitioner Relief by Ordering a Reliquidation of These Entries to the End That the Moneys Unjustly Exacted from the Petitioner Might Be Refunded.

At pages 30 and 41 of our first brief we cited ample authority to sustain this proposition and no reply thereto has been made by government counsel.

Conclusion.

It is now respectfully submitted that the reasons for allowance of the writ and stated pages 15 and 16 of our petition are perfectly sound. That the writ should issue and the decree complained of be reversed.

Respectfully submitted,

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